

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELVIS SEMPRIT,

Plaintiff,

-v-

CITY OF NEW YORK and JOSEPH PONTE,

Defendants.

15 Civ. 9932 (PAE) (JCF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Pro se plaintiff Elvis Semprit brings this action under 42 U.S.C. § 1983 alleging that the mattress he was issued while incarcerated caused him severe pain. Before the Court is the August 5, 2016 Report and Recommendation of the Hon. James C. Francis, United States Magistrate Judge, recommending that the Court dismiss this action with prejudice. Dkt. 10 (“Report”). For the following reasons, the Court adopts this recommendation.

I. Background

The Court incorporates by reference the summary of the facts provided in the Report. *See* Report at 2.

On December 18, 2015, Semprit filed a Complaint. Dkt. 2. On December 29, 2015, the Court referred this case to Judge Francis for general pretrial supervision and for a report and recommendation. Dkt. 4. On January 6, 2016, Judge Francis issued an Order to Amend, directing Semprit to file an Amended Complaint within 60 days and setting forth the legal standards that such a complaint must satisfy. Dkt. 7. Semprit subsequently requested an extension, Dkt. 8, which was granted to March 31, 2016. Dkt. 9. To date, Semprit has not filed an Amended Complaint.

On August 5, 2016, Judge Francis issued the Report, recommending that the Court dismiss the Complaint with prejudice. Objections were due by August 22, 2016. *See* Dkt. 10. To date, the Court has received no objections.

II. Discussion

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As neither party has submitted objections to the Report, review for clear error is appropriate. Because the Report explicitly states that “[f]ailure to file timely objections will preclude appellate review,” Report at 13–14, both parties’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).


Careful review of Judge Francis’s thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. As Sempritt has already had the opportunity to amend his Complaint, the Court agrees with Judge Francis that this dismissal shall be with prejudice.

CONCLUSION

For the foregoing reasons, the Court dismisses Semprit's Complaint with prejudice. The Clerk of Court is directed to close this case.

The Court directs the Clerk to mail a copy of this decision to plaintiff at the address on file.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: September 15, 2016
New York, New York